

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

RITA BOUCHER,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1:13-cv-01585-TWP-MPB
)	
UNITED STATES DEPARTMENT OF)	
AGRICULTURE, and SONNY PERDUE, ¹)	
)	
Defendants.)	

ORDER FOLLOWING MANDATE

This matter is before the Court following the Mandate issued by the United States Court of Appeals for the Seventh Circuit on September 30, 2019 ([Filing No. 68](#)).

Plaintiff Rita Boucher (“Ms. Boucher”) owns real property located in Hancock County, Indiana. The Property has been utilized as a farmstead for the production of livestock and grain for more than 150 years. Ms. Boucher and her late husband, David Boucher (“Mr. Boucher”), have owned the Property or otherwise been involved with it since at least the 1980s. They have received economic benefits through the Defendant United States Department of Agriculture’s (“USDA”) farming programs. In order to qualify for the USDA’s farming program economic benefits, certain requirements must be met and maintained at the Property, including wetlands conservation activities to preserve existing wetlands.

In the early 1990s, Mr. Boucher began to clean up areas of the farmland. In 2002, a USDA representative reported a potential wetland violation. This initiated a series of site visits and USDA decisions regarding the Property. The USDA eventually determined that portions of the Property

¹ Sonny Perdue is now the United States Secretary of Agriculture. Pursuant to Rule 25(d) of the Federal Rules of Civil Procedure, Sonny Perdue is substituted for Secretary Tom Vilsack as a defendant in this suit.

were wetlands and converted wetlands, and Ms. Boucher pursued the administrative process to appeal the determination.

On October 3, 2013, Ms. Boucher initiated this lawsuit, seeking judicial review of the final determination of the USDA that portions of her farmland property were wetlands and converted wetlands, thereby jeopardizing certain farming program economic benefits. Ms. Boucher requested declaratory relief under the Administrative Procedure Act, 5 U.S.C. § 706, that the USDA's actions were arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; were in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; were without observance of procedure required by law; and were unsupported by substantial evidence ([Filing No. 1 at 5](#)). After the parties filed cross-motions for summary judgment, the Court denied Ms. Boucher's motion and granted the USDA's motion, giving deference to the agency and upholding the actions of the agency ([Filing No. 57](#)), and entered final judgment in favor of the USDA ([Filing No. 58](#)). Ms. Boucher thereafter filed an appeal.

On appeal, the Seventh Circuit determined that the USDA's actions were arbitrary and capricious, and therefore explained, "We reverse the district court's affirmance of the USDA's final determination and remand the case to the district court to enter judgment granting appropriate relief to plaintiff Rita Boucher." ([Filing No. 68 at 5.](#))

Pursuant to 5 U.S.C. § 706(2), the Court **SETS ASIDE** the USDA's actions, findings, and conclusions as being arbitrary and capricious, and **REMANDS** this matter to the USDA to complete another investigation without delay and in compliance with the proper procedures required by law and in accordance with the Seventh Circuit's Opinion. Ms. Boucher is **granted** her costs in this action. Ms. Boucher is **directed** to file a Bill of Costs within **thirty (30) days** of

this Order. The Court **vacates** its initial Final Judgment at [Filing No. 58](#). Final judgment will issue under separate order.

SO ORDERED.

Date: 10/2/2019



TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

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